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and Certain of Its Affiliates

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re : Chapter 11 Case No.
: :
LEHMAN BROTHERS HOLDINGS INC., et al., : 08-13555 (SCC)
: :
Debtors. : (Jointly Administered)
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PLAN ADMINISTRATOR'S OBJECTION TO MOTION TO RESERVE

TO THE HONORABLE SHELLEY C. CHAPMAN,
UNITED STATES BANKRUPTCY JUDGE:

Lehman Brothers Holdings Inc., as Plan Administrator, files this objection to the *Motion to Reserve for Motion to Reclassify* filed by Joseph J. Waske (ECF No. 60448) (the “Motion to Reserve”) and respectfully represents:

OBJECTION¹

1. The Reserve Motion is the latest in a series of filings by Waske and a small handful of vocal individuals that purport to have acquired various securities issued prior to LBHI’s petition date.² In this present motion, Waske asks this Court to order a reserve for the benefit of Waske in excess of \$71 million for the possibility that the Court may grant his pending *Motion to Reclassify* [ECF No. 60337] (the “Motion to Reclassify”).

¹ Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Prior Objections (as defined below).

² A list of the various pleadings is annexed hereto as Exhibit A.

2. The Plan Administrator has already objected to the Motion to Reclassify.

In short, there is no substantive merit to Waske's arguments, and there are procedural impediments that bar the relief he requested:

- Waske has no Allowed Claim to be reclassified; he did not timely submit a proof of claim or obtain permission to file a late claim. Even if he had filed or could file a claim, a claim for a Subordinated Guarantee would be a Disputed Claim that would be expunged.
 - It would be duplicative of an Allowed Claim held by a Trustee for the applicable Trust.
 - LBHI did not extend an open offer following the Petition Date to guarantee Trust Preferred Securities that Waske or others could reasonably rely upon or accept in 2019.
- Waske cannot reclassify Allowed Claims held by Trusts because doing so would, among other things, be an impermissible amendment to the substantially consummated Plan, and be contrary to the express terms of the governing documents of the Trusts and the Subordinated Guarantee.
- Waske's arguments regarding the priority of the Subordinated Guarantee and their parity with other equity issued throughout the Lehman enterprise are based on incorrect factual assumptions and a misreading of the Subordinated Guarantee.

The Plan Administrator need not burden the Court with repetitive pleadings and incorporates here fully by reference the arguments set forth in: the *Plan Administrator's Objection to Motion to Reclassify* [ECF No. 60378] and the *Plan Administrator's Objection to Motion to Allow Late Claim* [ECF No. 59738] (together, the "Prior Objections").

3. The Court has sustained the Plan Administrators' objections to related requests based on the arguments set forth above and in the Prior Objections [ECF No. 59801] and should deny the Motion to Reclassify and, therefore, the Motion to Reserve for the same reasons now.

4. Further, the Plan does not require the Plan Administrator to establish a reserve for Waske. *See* Plan § 8.4. Waske has failed to satisfy his heavy burden in order to

prejudice all of LBHI's many creditors for his exclusive benefit. As previously explained by the Plan Administrator and accepted by the Court [*see* ECF No. 58763], the Motion to Reserve may be denied even while the Motion to Reclassify remains pending. The Plan Administrator does not intend to establish the reserve requested in the Motion to Reserve prior to the upcoming twentieth Plan Distribution scheduled to commence on April 2, 2020. [ECF No. 60419].

5. The Motion to Reserve may be denied without a hearing and should be denied with prejudice with respect to Waske and the parties who have expressed their support for the Motion to Reserve.

RESERVATION OF RIGHTS

6. LBHI reserves all rights to object to any claim that may be permitted to be asserted against any of the Debtors.

Dated: March 24, 2020
New York, New York

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Exhibit A

List of Pleadings

<u>Filing Party</u>	<u>Pleading</u>	<u>Date</u>	<u>ECF No.</u>
Rickey Gregory (“ <u>Gregory</u> ”)	Rickey Gregory Response To Order Granting Motion for Authorization For Lehman Brothers Special Financing Inc. And Lehman Brothers Commercial Corporation To Invest Disputed Claims Reserves For Claim Numbers 66455 And 66476	9/13/2014	46304
Gregory	Rickey Gregory Letter In Support Of Joint Liquidators Motion For An Order Enforcing The Modified Third Amended Joint Chapter 11 Plan Of Lehman Brothers Holdings Inc. And Its Affiliated Debtors For Purposes Of Distributions	2/26/2019	59555
Wu	Motion For An Order Enforcing The Modified Third Amended Joint Chapter 11 Plan Of Lehman Brothers Holdings Inc. And Its Affiliated Debtors for Purposes of Distributions	4/8/2019	59614
Gregory	Joinder Of Rickey M. Gregory to Rex Wu’s Motion	4/25/2019	59659
Wu	Statement Notice Of Errata re: Rex Wu’s Motion	5/06/2019	59680
Alex Olivo (“ <u>Olivo</u> ”)	Letter To Judge Chapman re: Support For Rex Wu’s Motion	5/9/2019	59686
Wu	Rex Wu Letter Regarding Joinder To Motion For An Order Enforcing The Modified Third Amended Joint Chapter 11 Plan Of Lehman Brothers Holdings Inc. And Its Affiliated Debtors For Purposes Of Distributions	5/13/2019	59715
Dan Ianello (“ <u>Mr. Ianello</u> ”)	Joinder Of Dan Ianello To Motion Of Rex Wu To Approve Motion For An Order Enforcing The Modified Third Amended Joint Chapter 11 Plan Of Lehman Brothers Holdings Inc. And Its Affiliated Debtors For Purposes Of Distributions	5/23/2019	59735

<u>Filing Party</u>	<u>Pleading</u>	<u>Date</u>	<u>ECF No.</u>
Julie Ianello (“ <u>Ms. Ianello</u> ”)	Joinder Of Julie Ianello To Motion Of Rex Wu To Approve Motion For An Order Enforcing The Modified Third Amended Joint Chapter 11 Plan Of Lehman Brothers Holdings Inc. And Its Affiliated Debtors For Purposes Of Distributions	5/23/2019	59736
Olivo	Joinder Of Alex Olivo To Rex Wu’s Motion	5/31/2019	59741
Wu	Response To The Plan Administrator’s Objection To Notice Of Motion For An Order Enforcing The Modified Third Amended Joint Chapter 11 Plan Of Lehman Brothers Holdings Inc. And Its Affiliated Debtors For Purposes of Distributions	6/06/2019	59751
Glen Blaze (“ <u>Blaze</u> ”)	Joinder Of Glen A. Blaze To Rex Wu’s Motion	6/03/2019	59753
Elizabeth Harrison (“ <u>Harrison</u> ”)	Joinder Of Elizabeth Harrison To Rex Wu’s Motion	6/04/2019	59755
Wu	Objection To The Timing Of The Early Distribution	6/13/2019	59772
Wu	Motion Of Rex Wu To Demand Services	6/13/2019	59773
Harrison	Objection To The Motion Of Plan Administrator For An Order In Aid Of Execution Of The Modified Third Amended Chapter 11 Plan Of Lehman Brothers Holdings Inc. And Its Affiliated Debtors	6/18/2019	59789
Ms. Ianello	Objection Of The Motion Of Plan Administrator For An Order In Aid Of Execution Of The Modified Third Amended Chapter 11 Plan Of Lehman Brothers Holdings Inc. And Its Affiliated Debtors	6/18/2019	59790

<u>Filing Party</u>	<u>Pleading</u>	<u>Date</u>	<u>ECF No.</u>
Mr. Ianello	Objection To The Motion of Plan Administrator For An Order In Aid Of Execution Of The Modified Third Amended Chapter 11 Plan Of Lehman Brothers Holdings Inc. And Its Affiliated Debtors	6/18/2019	59791
Ms. Ianello	Motion To Approve Motion To Demand Service	6/18/2019	59792
Mr. Ianello	Motion To Approve Motion To Demand Service	6/18/2019	59793
Harrison	Letter To Judge Chapman	8/28/2019	59913
Waske	Motion To Reclassify	1/2/2020	60337
Wu	Joinder To Motion To Reclassify	1/7/2020	60348
Olivo	Joinder To Motion Of Joseph J. Waske	1/9/2020	60354
Harrison	Statement Joinder To Motion To Reclassify Shares Filed By Joseph J. Waske	1/21/2020	60379
Blaze	Statement Joinder To Motion To Reclassify Shares Filed By Joseph J. Waske	1/22/2020	60381
Wu	Letter To Judge Chapman	1/3/2020	60400
Waske	Response To Plan Administrators Objection To Motion To Reclassify	1/31/2020	60403
Waske	Motion To Reserve For Motion To Reclassify	2/25/2020	60448
Jeffrey Wood	Letter In Support Of Motion By Joseph Waske	3/09/2020	60478
Brian Linse	Letter In Support Of Motion By Joseph Waske	3/09/2020	60479